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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

RIMMA BREEZE, Plaintiff, Cross-defendant and Respondent, v. MARGARET G. BAER et al., Defendants, Cross-complainants and Appellants; COLIN BREEZE et al., Cross-defendants and Respondents.	D067704 (Super. Ct. No. 37-2013-00067261-CU-CO-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Timothy B. Taylor, Judge. Affirmed.

Gordon & Rees, Miles D. Scully, Ian G. Williamson and Andrew J. Londerholm for Defendants, Cross-complainants and Appellants.

Peretz & Associates and Yosef Peretz for Plaintiff and Cross-defendants and Respondents.

This appeal illustrates the hazards of going off the record to discuss issues involving a complicated 12-page, 52-question special verdict form.

In a special verdict, a jury found Margaret Baer and the school she operates, the Evans School (school) (collectively, Baer), breached an express contract to compensate Rimma Breeze for providing computer and technology services, and awarded Breeze $42,500 in damages. Based on the same facts, the jury also found in Breeze's favor on her cause of action for quantum meruit, awarding her $95,336 as the reasonable value of her services.

Over Baer's objections, the court entered judgment based on the $95,336 quantum meruit award. Citing *Hedging Concepts, Inc. v. First Alliance Mortgage Co.* (1996) 41 Cal.App.4th 1410, 1419 (*Hedging Concepts*), Baer contends the judgment should have been based on the $42,500 breach of contract award because a party cannot recover under quantum meruit (a contract *implied* in law) where the parties had an *express* contract governing the same subject.

Baer is correct on the law. Quantum meruit is an equitable theory that supplies, by implication, missing contractual terms. (*Hedging Concepts*, *supra*, 41 Cal.App.4th at p. 1419.) "A quantum meruit analysis cannot supply 'missing' terms that are not missing." (*Ibid.*) Thus, "there cannot be a valid express contract and an implied contract, each embracing the same subject, but requiring different results." (*Id.* at p. 1420.)

However, the judgment must be affirmed under the doctrine of invited error. Baer's attorneys, who drafted the special verdict form, submitted a sequence of yes-or-no questions requiring the jury to resolve the quantum meruit theory, even after first finding

an express contract. A party cannot submit a matter for a jury's determination and then, when the answer turns out not to their liking, contend on appeal the jury should not have decided the matter. (See *Newton v. Thomas* (1955) 137 Cal.App.2d 748, 763.)

Baer's attorneys assert the court should have inserted a "skipping instruction," instructing the jury to skip quantum meruit if the jury found the parties had an express contract. But the record does not show Baer's attorneys ever asked for that instruction. The discussion between the court and counsel about the verdict form was unreported. The next day, when the court gave counsel an opportunity to place objections to the verdict form on the record, Baer's attorneys said nothing about a skipping instruction. As a result, Baer is bound by the jury's determination of the quantum meruit questions she submitted for decision.

FACTUAL AND PROCEDURAL BACKGROUND[1]

A. *Volunteer IT Work*

Baer owns and operates the school, a private elementary school in La Jolla, California, with approximately 138 students.

In 2009 Breeze enrolled one of her sons in the school, paying full tuition. Breeze re-enrolled him for the 2010-2011 academic year, again paying full tuition.

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1 The trial, which included testimony from 12 witnesses, consumes 1,500 pages of reporter's transcript. However, the "Summary of Facts" for the "Trial," in Baer's opening brief, consists of just one short paragraph, and violating California Rules of Court, rule 8.204(a)(1)(C), contains no citations to the reporter's transcript. The facts, drawn largely from the respondents' brief, are recited in the light most favorable to the judgment. (See *SCI California Funeral Services, Inc. v. Five Bridges Foundation* (2012) 203 Cal.App.4th 549, 552-553.)

At the beginning of the 2011-2012 academic year, Breeze again enrolled her son in the school and signed a contract agreeing to pay $12,700 in tuition. The school sent Breeze a form, inquiring if she had any skills she would be willing to perform for the school as a volunteer. At the time, the school had a basic website. Breeze returned the form to the school, stating, "I build and design websites for a living."

In response, one of the teachers, Ms. Dixon, asked Breeze to update the fonts and make some new "posts" on the school's Website. Breeze testified that from summer 2011 to April 2012, she volunteered about 12 to 15 hours each month "doing IT [(information technology)] work" for the school.

B. *The Oral Contract for IT Services*

In April 2012 Dixon told Breeze the school was planning to upgrade its "IT systems" in anticipation of an upcoming inspection by an accreditation committee. Later that month, Baer, Dixon, and Breeze met to discuss increasing Breeze's role in improving the school's computer system. They discussed Breeze's education background, work history, and qualifications. Baer and Dixon told Breeze they wanted to improve the school's network and wireless system, and use iPads in classrooms. Baer added that she wanted more interaction and communication with the parents through the school's website, and an upgraded electronic newsletter.

During the meeting, Baer said to Breeze, "This is a lot of work, and obviously, I wouldn't ask you to do this without some sort of arrangement of compensation." Baer told Breeze that with some other parents who perform services for the school, "we work out a tuition reimbursement." Baer explained she compensated other parents this way

"for tax purposes." At trial, Baer conceded she intended to give Breeze a reduction in tuition in exchange for the technology services.

Baer told Breeze she would "reimburse tuition for the services that [Breeze would] provide" and also cover "any out-of-pocket expenses" Breeze incurred. Baer and Breeze did not discuss Breeze's hourly rate, a budget, or the number of hours Breeze expected to work. Baer told Breeze that at some unspecified time in the future, they would look at the work Breeze did, determine how long it took, and "we would sit down at one point and come to an agreement about the value of the work versus the value of the tuition." Breeze understood that the amount of tuition reimbursement would depend on the scope of her work.

At Dixon's request, Breeze sent Baer an e-mail the next day, outlining the services Breeze intended to perform. Breeze divided the work into three areas: website, network, and iPad rollout. She planned to upgrade the website with a "faculty portal" and a "parent portal that would have integrated calendar, a newsletter, news feeds, places for parents to post comments, bulletin boards, [and] share ideas." The school already had a few wireless internet stations; however, Breeze testified, "[I]t wasn't going to be adequate if we were to add an additional 50 mobile devices . . . . So we had to figure out how to redesign what we had and in place without a huge capital outlay." Breeze also described how to integrate iPads in the classrooms. Dixon replied to this e-mail, stating, "Terrific. A tall order."

C. *Breeze Performs IT Services*

From April 2012 to the end of the academic year in June 2013, Breeze performed "all that work" described in her April 2012 e-mail. Breeze was also "the on-call IT person," receiving and responding to requests from students, parents, faculty, and staff about how to use certain computer applications and e-mail systems. She upgraded the school's newsletter and trained students to use the new applications. In materials submitted to the accreditation agency, the school referred to Breeze as its "Director of Technology."

D. *Baer Refuses to Give Breeze Tuition Reimbursement*

In July 2013 Breeze met with Baer, ostensibly to discuss whether Breeze would be teaching at the school's summer technology camp, as well as the technology plan for the upcoming academic year. But instead of discussing next year's plan, Baer handed Breeze a $51,250 invoice for tuition then due for her two children. Breeze testified she was "surprised and confused" by the invoice because she thought they had "an arrangement about abating the tuition" in exchange for all the work she did.[2]

In August 2013 Breeze received a letter from the school's attorneys, taking the position the school did not agree to trade Breeze's work for tuition. Responding, Breeze prepared an invoice, showing time spent and tasks performed under the April 2012 agreement. Breeze prepared the invoice by reviewing her e-mails, computer "log-ins,"

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2 Baer's testimony about the July 2013 meeting was significantly different from Breeze's. Baer testified she was planning on offering a discount on the tuition, but because Breeze was angry and volatile during the meeting, Baer decided to not offer any discount at that time and told Breeze, "We can't go on like this."

and other records to create an hourly spreadsheet showing the work she performed. The invoice totaled 1,247 hours, which Breeze testified represented "everything that I did for the school over a 15-month period." Breeze billed her time at $100 per hour, and added $5,336 in costs she had advanced for travel, six iPads, and certain internet fees.

The school refused to pay any part of Breeze's $130,036 invoice. When Breeze learned the school was not going to honor the agreement, she changed some passwords and refused to deliver the school's website files.

E. *Litigation, Verdict, and Judgment*

In September 2013 Breeze sued Baer, individually and "doing business as The Evans School," for alleged breach of express contract, breach of implied-in-fact contract, quantum meruit, and declaratory relief.[3] At trial, Breeze's operative first amended complaint also named "The Evans School, Inc." as a defendant and added the following additional causes of action: breach of the implied covenant of good faith and fair dealing, copyright infringement, fraudulent concealment, suppression and non-disclosure, intentional interference with business relations, intentional misrepresentation, negligent

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[3] Because the resolution of this appeal turns, in part, on distinctions between these theories of liability, it is helpful to explain the terminology now. The distinction between an implied-in-fact contract and an express contract is that, in the former, the promise is not expressed in words but is implied from the promisor's conduct. (*Weitzenkorn v. Lesser* (1953) 40 Cal.2d 778, 794.) In contrast to both express and implied-in-fact contracts, quantum meruit, sometimes called a "contract implied in law," is not really a contract. (*Maglica v. Maglica* (1998) 66 Cal.App.4th 442, 449 (*Maglica*) ["As every first year law student knows or should know, recovery in quantum meruit does not require a contract."].) Quantum meruit is not based on the parties' promises. It is an obligation to pay for certain services rendered, created by law to prevent unjust enrichment. (*Ibid*.)

misrepresentation, negligence, violation of Penal Code section 496,[4] and unjust enrichment.

Baer and the school filed a first amended cross-complaint against Breeze, Breeze's husband, Colin Breeze, and "Breeze Ventures Management, LLC doing business as Breeze IT Consulting" for alleged conversion, breach of contract (for unpaid tuition), violation of the Computer Fraud and Abuse Act (18 U.S.C. § 1030) (CFAA),[5] and fraud.[6]

After certain rulings (not challenged here) and voluntary dismissals of some causes of action, the case went to the jury on Breeze's claims for: (1) breach of express contract; (2) breach of implied-in-fact contract; (3) quantum meruit; (4) negligent

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4 Penal Code section 496, dealing with receiving stolen property, provides in subdivision (c) that any person injured by a violation of that statute "may bring an action for three times the amount of actual damages, if any, sustained by the plaintiff, costs of suit, and reasonable attorney's fees."

5 Congress enacted the CFAA in 1984 to address the problem of computer crime. Originally a criminal statute, it now also includes a civil action component as well. (See generally, Annot., Validity, Construction, and Application of Computer Fraud and Abuse Act (18 U.S.C.A. § 1030) (2001) 174 A.L.R. Fed 101.)

6 On several occasions, the court rebuked both sides for unnecessarily complicating what should have been a simple contract case. Ruling on nonsuit motions, the court commented, "[W]hat was and should have remained a simple contract dispute was unnecessarily escalated . . . by the lawyers for both sides, who added many layers of unneeded complexity by pleading the kitchen sink." Denying Baer's posttrial motions, the court stated, "Both sides completely lost their perspective by inserting meritless tort theories and statutory claims into what was really a simple case." After the jury returned its verdict, the court addressed both counsel, stating, "I told you guys that this CFAA and theft thing was pleading the kitchen sink. It was a tactical mistake . . . . You made it totally unnecessary and complicated . . . . And, to boot, created a lot of ill feelings where they didn't need to have been created."

misrepresentation; and (5) violation of Penal Code section 496. On Baer's cross-complaint, the jury was asked to decide: (1) conversion; (2) breach of contract for unpaid tuition, and (3) violation of the CFAA.

By special verdict, the jury found in Breeze's favor on (1) breach of express contract, awarding her $42,500 in damages and (2) quantum meruit, awarding $95,336 as the "reasonable value of the services that were provided." The jury returned a defense verdict on Breeze's claims for breach of an implied-in-fact contract, negligent misrepresentation, and violation of Penal Code section 496.[7]

On Baer's cross-complaint, the jury found in favor of Baer for breach of contract, awarding $51,250 in damages. The jury rejected Baer's other cross-claims.

The court entered a net judgment in favor of Breeze for $44,086 by offsetting Baer's $51,250 recovery for unpaid tuition from Breeze's $95,336 recovery for quantum meruit.

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[7] After the jury returned its verdict, but before it was discharged, Baer's counsel discovered the defense verdict on Breeze's claim for breach of an implied-in-fact contract may have been caused by a drafting mistake in the verdict form. However, in light of the jury's finding that Baer and the school breached an express contract, Breeze's counsel declined to have the jury sent back with a corrected verdict form to deliberate again on the breach of implied-in-fact contract, and instead accepted the defense verdict on that cause of action.

F. *Posttrial Motions and Appeal*

Baer filed a motion for judgment notwithstanding the verdict (JNOV) and a motion to vacate the judgment under Code of Civil Procedure[8] section 663. The thrust of both motions was identical: Citing *Hedging Concepts, supra*, 41 Cal.App.4th 1410, Baer asserted that because the jury found an express contract between the parties that provided compensation for providing computer services, as a matter of law Breeze could not recover under quantum meruit for the same services. The court determined Breeze was the prevailing party, and in an amended judgment awarded Breeze $28,944.10 in costs. Baer timely appealed from the judgment, as amended. Her notice of appeal does not specify the order denying her JNOV and section 663 motions.

DISCUSSION

I. *APPEALABILITY*

Baer's opening brief states she appeals from the amended judgment and from "orders denying post-trial motions." The parties do not discuss whether the orders denying Baer's JNOV and section 663 motions are appealable; however, we have an independent obligation to raise and address issues of appealability. (*Judge v. Nijjar Realty, Inc.* (2014) 232 Cal.App.4th 619, 629.)

The order denying Baer's JNOV motion is a separately appealable order. (§ 904.1, subd. (a)(4).) Similarly, this court has held an order denying a motion to vacate under

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8 All statutory references are to the Code of Civil Procedure unless otherwise specified.

section 663 is an appealable order. (*Sehulster Tunnels/Pre-Con v. Traylor Brothers, Inc./Obayashi Corp*. (2003) 111 Cal.App.4th 1328, 1337, fn. 6 (*Sehulster Tunnels/Pre-Con*); contra, *City of Los Angeles v. Glair* (2007) 153 Cal.App.4th 813, 820-823.)

Baer's notice of appeal does not specify she appeals from the order denying her JNOV motion or her motion to vacate under section 663, which was entered on January 30, 2015. It only states she appeals from "[j]udgment after jury trial," and specifies this as the judgment "entered on [] November 17, 2014, as amended February 13, 2015."

Accordingly, we lack jurisdiction to consider Baer's appellate arguments except in the context of her appeal from the judgment. (See *In re Baycol Cases I & II* (2011) 51 Cal.4th 751, 761, fn. 8 [if order is appealable, an appeal must be taken or the right to appellate review is forfeited]; *Sole Energy Co. v. Petrominerals Corp*. (2005) 128 Cal.App.4th 212, 239 ["A notice of appeal from a judgment alone does not encompass other . . . separately appealable orders."].)

II. *BREEZE SHOULD NOT HAVE RECOVERED IN QUANTUM MERUIT BECAUSE THE JURY FOUND AN EXPRESS CONTRACT ON THE SAME SUBJECT*

Quantum meruit is an equitable theory of recovery based on the idea that where one renders services to another who benefits thereby, the person performing such services is entitled to receive reasonable compensation for the services even in the absence of an express contract requiring compensation. (*Hedging Concepts*, *supra*, 41 Cal.App.4th at p. 1419.) Under such circumstances, a contract to pay for the services is implied by law to avoid unjust enrichment to the party for whose benefit the services were provided. (*Maglica*, *supra*, 66 Cal.App.4th at p. 449.) Recovery under quantum meruit does not

require a contract. The theory applies in the absence of an actual agreement between the parties. (*Ibid.*) "The whole point of quantum meruit recovery is to compensate plaintiffs who have provided a benefit to defendants but who do not have a contract—express or implied—with those defendants." (*In re De Laurentiis Entertainment Group, Inc.* (9th Cir. 1992) 963 F.2d 1269, 1273 [applying California law].)

There is no equitable basis for an implied-in-law promise to pay reasonable value, however, when the parties have an actual agreement covering compensation. (*Hedging Concepts, supra*, 41 Cal.App.4th at p. 1419.) "'The reason for the rule is simply that where the parties have freely, fairly and voluntarily bargained for certain benefits in exchange for undertaking certain obligations, it would be inequitable to imply a different liability. . . .'" (*Ibid.*) Thus, where the parties have entered into a contract to pay for services, the contract price is the agreed price and the doctrine of quantum meruit cannot supply an alternative price. (*Ibid.*; see also *Willman v. Gustafson* (1944) 63 Cal.App.2d 830, 833 [there can be no implied-in-law promise to pay reasonable value for services when there is an express agreement to pay a fixed sum]; *Wal Noon Corp. v. Hill* (1975) 45 Cal.App.3d 605, 613 ["There cannot be a valid, express contract and an implied contract, each embracing the same subject matter, existing at the same time."].)

Here, the jury found there was an express contract between the parties governing Breeze's compensation for computer and related services she provided to the school. No other compensation terms for such services could be implied in law under quantum meruit.

Citing *Oliver v. Campbell* (1954) 43 Cal.2d 298 (*Oliver*), Breeze contends that as a general rule a party who has been damaged by a breach of an express contract "'has an election to pursue any of three remedies.'" These remedies include a recovery under ""*quantum meruit* so far as he has performed . . . ."""

Although acknowledging that under *Hedging Concepts* she cannot recover under a quantum meruit theory of liability because the jury found an express contract, Breeze contends that under *Oliver*, the *measure of damages* for her breach of contract claim can be the amount the jury awarded her under quantum meruit. In an attempt to uphold the amended judgment without violating *Hedging Concepts*, Breeze seeks to take the higher amount the jury awarded under the legally improper quantum meruit theory of liability, and substitute it for the lower damage amount the jury awarded under the controlling breach of express contract theory of liability.

Breeze's argument fails for at least two reasons. First, it is inconsistent with the jury instructions on damages. Contrary to Breeze's appellate argument, the jury was not instructed it could award the reasonable value of Breeze's services as the measure of damages for breach of express contract. Rather, without objection, the court instructed the jury the measure of damages for breach of contract was the amount Baer agreed to pay under the contract. The court instructed the jury:

> "Now, if you decide that Ms. Breeze has proved her claim against Ms. Baer and the Evans School for breach of contract, you must also decide how much money will reasonably compensate Ms. Breeze for the harm caused by the breach. This compensation is called damages. The purpose of such damages is to put Ms. Breeze in as good a position as she would have been in if Ms. Baer and the Evans School had performed as promised. [¶] . . .

> "Now, to recover damages for the breach of a contract to pay money, Ms. Breeze must prove the amount due under the contract."

The special verdict form is consistent with these contract damage instructions. Question 9 asked the jurors, "What are Rimma Breeze's damages" for breach of contract? The jury wrote: "$42,500." The jury was not asked, and therefore never answered, whether Breeze was entitled to recover the reasonable value of her services as a measure of damages for breach of express contract. If Breeze wanted the jury to answer that question, it was incumbent upon her to ask for it. (See *Behr v. Redmond* (2011) 193 Cal.App.4th 517, 530.) Moreover, in response to special verdict question 23, contained in the quantum meruit section of the special verdict, the jury determined the reasonable value of Breeze's services was $95,336. Thus, by awarding a different amount ($42,500) as contract damages, the jury demonstrated it did not intend to award Breeze an amount representing the reasonable value of her services as damages for breach of express contract.

Second, entirely apart from the jury instructions and form of special verdict, Breeze's argument is based on a misunderstanding of the rule in *Oliver*. In *Oliver*, an attorney who had fully performed his express fee agreement sought $10,000 as the "reasonable value of services rendered." (*Oliver*, *supra*, 43 Cal.2d at p. 300.) The defense argued Oliver had been employed under an express contract for a fixed fee of $750 plus costs, which were $100, making a total of $850. (*Ibid*.) Before trial, the defendant paid $450 in fees and $100 costs. (*Id.* at p. 301.)

The *Oliver* court acknowledged the general rule, relied upon by Breeze here, that "'one who has been injured by a breach of contract has an election to pursue any of three remedies . . . .'" (*Oliver, supra,* 43 Cal.2d at p. 302.) However, the *Oliver* court applied an exception or limitation for cases where there is nothing left to be done under the contract but for the defendant to pay the contract price. In such a case, the plaintiff is limited to the amount for which he or she originally agreed to perform the service, and will not be allowed a greater recovery in quantum meruit. The *Oliver* court stated, "In such cases he recovers the full contract price and no more." (*Id.* at p. 306.) Thus, the court in *Oliver* directed the trial court to enter judgment for only $300, representing the unpaid balance on the $850 contract price. (*Id.* at p. 307.)

Similarly here, the jury found Baer breached by not paying Breeze after Breeze fully performed services for the 2012-2013 academic year. Because Breeze had fully performed her part of the contract at the time of breach, the only consideration due from Baer was the agreed amount of money, and Breeze could not have recovered contract damages measured by the reasonable value of her services. (*Oliver, supra,* 43 Cal.2d at pp. 306-307.)

III. *INVITED ERROR*

A. *Factual Background*

From the first day of trial to conclusion, Baer's attorneys were responsible for drafting the special verdict form. Baer's opening brief acknowledges her attorneys were the ones who submitted a proposed verdict form to the court.

On October 27, 2014, after a full day of trial, and with only one trial day remaining, the court told counsel, "[W]e are running out of time" to deal with jury instructions and the special verdict form. After sending the court reporter and court staff home for the night, the court stated, "[C]ounsel will be stuck in here with me until we finish." The court assured counsel that "any decisions that I make while we are off the record, if you disagree with them, I'll give you an opportunity to place your disagreement on the record." The court asked counsel, "Is there anything else for the record before we have an off-the-record discussion about the form of special verdict and jury instructions?" After both lawyers said there was nothing else, the reported proceedings concluded for that day.

The next day, the reporter's transcript begins with the court stating, "Yesterday, after the jury was sent home, the Court and counsel met to discuss again the form of Special Verdict and the jury instructions. And [Breeze's lawyer] has indicated a desire to place exception or objections . . . on the record, which I'm happy to have him do at this time."

Breeze's lawyer addressed objections he had to the CFAA questions in the special verdict form. At the court's request, Baer's lawyer responded to these objections. The court overruled Breeze's objections, and then asked Baer's attorney if he had anything he wanted to place on the record, stating, "How about from the defense side?"

Baer's attorney said nothing about the form of special verdict. He objected to the court's rejection of "several" unspecified jury instructions. After noting the objection, the court confirmed that "both sides" had the "final version of the Special Verdict so that they

may use it in closing argument." Both lawyers indicated they had the verdict form. There was no further discussion about the special verdict form. Baer's attorneys said nothing indicating an objection or concern about the quantum meruit questions or anything else in the verdict form.

In the appellants' appendix, Baer's attorneys have included a draft version of the special verdict form without any file stamp, and that contains a handwritten note at the top of page one stating, "[N]otes are Court's rulings on off-record conference [on] 10-27 after trial day." The record does not reflect who made that notation or the handwritten notes in the body of the verdict form.[9] The relevant parts of this draft verdict form are quoted below, without any handwritten notes. This represents the version of the special verdict form that Baer's attorneys submitted to the court at the start of the unreported conference:

> "**Plaintiff's Claim for Breach of Contract**
>
> "1. Did the parties agree to give each other something of value?
> ___ Yes ____ No
>
> "If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions in this section and proceed to question 10
>
> "2. Did the parties agree to the terms of the contract?
> ___ Yes ____ No

[9] In response to a question at oral argument, Baer's attorney stated he wrote the notes, and this was the draft verdict form submitted to the court at the unreported conference.

"If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions in this section and proceed to question 10.

"3. Were the contract terms clear enough so that the parties could understand what each party was required to do?
___ Yes ____ No

"If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions in this section and proceed to question 10.

"4. Did Rimma Breeze do all, or substantially all, of the significant things that the contract required her to do?
___ Yes ____ No

"If your answer to question 4 is yes, then skip question 5 and answer question 6. If you answered no, answer question 5.

"5. Was Rimma Breeze excused from having to do all, or substantially all, of the significant things that the contract required him [*sic*] to do?
___ Yes ____ No

"If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions in this section and proceed to question 10.

"6. Did all the conditions occur that were required for Margaret Gale Baer's or the Evans School, Inc.'s performance?
___ Yes ____ No

"If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions in this section and proceed to question 10.

"7. Did Margaret Gale Baer or The Evans School, Inc. fail to do something that the contract required them to do?
___ Yes ____ No

"If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions in this section and proceed to question 10.

"8. Was Rimma Breeze harmed by that failure?
___ Yes ____ No

"If your answer to question 8 is yes, then answer question 9. If you answered no, stop here, answer no further questions in this section and proceed to question 10.

"9. What are Rimma Breeze's damages?

"Proceed to the ne [*sic*] continuing with question 10

"**Plaintiff's Claim for Breach of Implied-in-Fact Contract**

"**If you answered question number 3 yes, skip this section and proceed to question 20. If you answered questions 1, 2 or 3 no, proceed with question 10.**

"[**Plaintiff objects to this instruction]**

"10. Did the parties agree to give each other something of value?
___ Yes ____ No

"If your answer to question 10 is yes, then answer question 11. If you answered no, stop here, answer no further questions in this section and proceed to question 20.

"11. Was the conduct of Rimma Breeze to provide IT services and Margaret Gale Baer or The Evans School Inc. to receive IT services intentional?
___ Yes ____ No

"If your answer to question 11 is yes, then answer question 12. If you answered no, stop here, answer no further questions in this section and proceed to question 20.

"12. Did Defendants know or have a reason to know that Plaintiff would interpret Defendants' acceptance of IT services as an agreement to enter into a contract?
___ Yes ____ No

"If your answer to question 12 is yes, then answer question 13. If you answered no, stop here, answer no further questions in this section and proceed to question 20.

"13. Were the contract terms clear enough so that the parties could understand what each party would be required to do?
___ Yes ____ No

"If your answer to question 13 is yes, then answer question 14. If you answered no, stop here, answer no further questions in this section and proceed to question 20.

"14. Did Rimma Breeze do all, or substantially all, of the significant things that the contract required her to do?
___ Yes ____ No

"If your answer to question 14 is yes, then answer question 15. If you answered no, stop here, answer no further questions in this section and proceed to question 20.

"15. Was Rimma Breeze excused from having to do all, or substantially all, of the significant things that the contract required him [*sic*] to do?
___ Yes ____ No

"If your answer to question 15 is yes, then answer question 16. If you answered no, stop here, answer no further questions in this section and proceed to question 20.

"16. Did all the conditions occur that were required for Margaret Gale Baer's or the Evans School, Inc.'s performance?
___ Yes ____ No

"If your answer to question 16 is yes, then answer question 17. If you answered no, stop here, answer no further questions in this section and proceed to question 20.

"17. Did Margaret Gale Baer or The Evans School, Inc. fail to do something that the contract required them to do?
___ Yes ____ No

"If your answer to question 17 is yes, then answer question 18. If you answered no, stop here, answer no further questions in this section and proceed to question 20.

"18. Was Rimma Breeze harmed by that failure?
___ Yes ____ No

"If your answer to question 18 is yes, then answer question 19. If you answered no, stop here, answer no further questions in this section and proceed to question 20.

"19. What are Plaintiff's damages?

"**Continue to the next section, proceed with question 20**.

"**Plaintiff's Claim for Quantum Meruit**

"20. Did Margaret Gale Baer or The Evans School, Inc. request, by words or conduct, that Rimma Breeze perform services for the benefit of Margaret Gale Baer or The Evans School, Inc.?
___ Yes ____ No

"If your answer to question 20 is yes, then answer question 21. If you answered no, stop here, answer no further questions in this section and proceed to question 24.

"21. Did Rimma Breeze perform services as requested?
___ Yes ____ No

If your answer to question 21 is yes, then answer question 22. If you answered no, stop here, answer no further questions in this section and proceed to question 24.

"22. Did Margaret Gale Baer or The Evans School, Inc. pay Rimma Breeze for the services?
___ Yes ____ No

"If your answer to question 22 is no, then answer question 23. If you answered yes, stop here, answer no further questions in this section and proceed to question 24.

"23. What is the reasonable value of the services that were provided? $_____.

B. The Invited Error Doctrine

"Where a party . . . induces the commission of error, he [or she] is estopped from asserting it as a ground for reversal." This application of the estoppel principle is generally known as the doctrine of invited error. (*Horsemen's Benevolent & Protective Assn. v. Valley Racing Assn.* (1992) 4 Cal.App.4th 1538, 1555 (*Horsemen's*); see also *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 403 [explaining invited error doctrine].)

As relevant here, under the doctrine of invited error, "[a]n appellant cannot submit a matter for determination by the lower court and then contend on appeal that the matter was beyond the scope of the issues." (*Horsemen's, supra,* 4 Cal.App.4th at p. 1555; see also *Estate of Armstrong* (1966) 241 Cal.App.2d 1, 7 [holding that appellant is estopped from claiming that the trial court erred in deciding an issue after it expressly invited the court to decide the issue]; 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 390, p. 449 [appellant "cannot submit a matter for determination by the lower court and contend on appeal that the matter was beyond the scope of the issues"].)

The doctrine of invited error has been applied to situations, similar to this, when a party has participated in the preparation of a special verdict form and relies on an error in the special verdict form to argue that the verdict should be reversed. (*Mesecher v. County of San Diego* (1992) 9 Cal.App.4th 1677, 1685–1687 [under the doctrine of invited error, a party that participated in preparing a verdict form that allowed the jury to reach an inconsistent verdict could not raise the inconsistent verdict as a basis for appeal]; *Newton v. Thomas, supra,* 137 Cal.App.2d at p. 763 [where the verdict form allowed the

jury to return a verdict in favor of plaintiffs who had waived their right to recover, defendants' responsibility for drafting the verdict form denies them the right to claim error, as "[t]he situation is governed by the rule that where a party joins in the submission of an issue to a jury it cannot thereafter attack that submission [citation] and by the rule of 'invited error'"].)

Here, Baer's attorneys drafted a special verdict form that directed the jury to decide Breeze's quantum meruit theory, even after first finding the existence of an express contract. The skipping instruction Baer asked the court to give directed the jury to skip implied-in-fact contract if the jury found an express contract existed—*not* to skip quantum meruit. In fact, the skipping instruction Baer's attorneys sought affirmatively told the jury that if it found express contract, it should skip implied in fact contract and then "proceed to question 20"—which are the quantum meruit interrogatories.

Although Breeze's brief does not use the term "invited error," she argues, "the record does not show that Appellants submitted any proposed verdict form that included a skipping instruction before the special verdict form's section on quantum meruit. To the contrary, the form of special verdict that was under discussion 'after hours and off the record' already included the *quantum meruit* section." Breeze's brief also asserts, "Appellants' proposed . . . skipping instruction provides: 'If you answered question number 3 yes, skip this section and proceed to question 20.' And question 20, et seq. relate to *quantum meruit*."

These arguments sufficiently frame the invited error issue, and it is clear Baer's attorneys understood it as such because in their reply brief they seek to justify their

failure to put an instruction in the verdict form that the jury skip quantum meruit if the jury came back with a plaintiff's verdict on express contract. Specifically, Baer's counsel state they did not ask for such an instruction because it would have inevitably been denied, and therefore would have been futile to even ask. The reply brief explains:

> "The verdict form went through several iterations. The iteration that existed at the time of the off-the-record conference referenced in Appellants' Opening Brief did not contain any questions for the cause of action for quantum meruit. It was at that conference that the trial court directed that the quantum meruit cause of action be added to the verdict form. What Appellants argue here is that there was a series of questions for breach of implied contract. There was a skipping instruction at the head of that section. Plaintiff objected to that skipping instruction and the trial court directed that it be removed. In light of that direction, it is clear to Appellants that a similar skipping instruction at the head of the quantum meruit section would have been ordered stricken. In striking the skipping instruction and impliedly refusing to include it for the questions to be added to the verdict form, the court below made an error of law in instructing the jury."

At the hearing on Baer's JNOV and section 663 motions, Baer's counsel made a similar argument, stating:

> "I tried to make it clear in the special verdict and plaintiff's counsel objected and the court directed me to remove that instruction. That instruction was there in an early draft of the special verdict form at the top of the implied in fact contract. It says, 'If you answer question 3 yes, skip this cause of action." Plaintiff's counsel objected. We met with Your Honor late one afternoon."[10]

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10 The court responded, "So I think you preserved your record." However, that comment was based on a misunderstanding that counsel's reference to a contract "implied in fact" meant "quantum meruit." This becomes clear later in the hearing, when Breeze's lawyer asked the court, "when you say implied in fact, do you mean quantum meruit?" The court replied, "Yes, just another way of saying it."

We reject Baer's attempt to avoid application of the invited error doctrine in this manner. Baer's reply brief cites no authority and contains no legal analysis for the asserted futility exception to the invited error doctrine. Further, the factual assertions made to support a finding of futility are unsupported by a single citation to the record. Given the lack of legal authority, abject failure of analysis, and zero record citations, Baer has forfeited review of this issue. (*Jefferson Street Ventures, LLC v. City of Indio* (2015) 236 Cal.App.4th 1175, 1196, fn. 2 [noting forfeiture from a "failure to present any reasoned legal analysis of the point"].) This court is not obligated to research the relevant law or to develop an appellant's otherwise conclusory legal assertions. (*Dills v. Redwoods Associates, Ltd.* (1994) 28 Cal.App.4th 888, 890, fn. 1.) To the contrary, this court is entitled to disregard legal assertions not supported by meaningful argument, particularly where the proponent of such assertions has the burden to establish grounds for reversal. (*Sehulster Tunnels/Pre-Con, supra,* 111 Cal.App.4th at p. 1345, fn. 16.)

Moreover, even if we were to consider Baer's argument on its merits, we would reject it. Key elements of Baer's factual assertions are contradicted by the record. For example, she states the special verdict submitted to the court at the off-the-record conference did not already contain quantum meruit questions. However, the special verdict Baer's attorney placed in the appellant's appendix, which has the handwritten notation, "notes are Court's rulings on off-record conference 10-27 after trial day" has a section on quantum meruit. The record contains no other draft special verdict.

Further, Baer's explanation is inconsistent with the verdict form she asked the court to give. Her proposed skipping instruction directed the jury to "proceed to question

20" after finding express contract in question 3. Question 20 is the first question in the quantum meruit section of the verdict form. Thus, contrary to Baer's contentions here, the record shows Baer's attorneys did not ask the court to direct the jury to skip quantum meruit if the jury found express contract. Rather, they wanted the court to direct the jury to only skip implied-in-fact contract upon finding an express contract existed.

Finally, even taking Baer's attorneys' unsupported factual assertions at face value, their argument that a request for a skipping instruction as to quantum meruit would have been futile is unpersuasive. The verdict form presented the jury with two types of *contractual* liability: express contract and contract implied from the parties' conduct; i.e., contract implied in fact. Baer's attorneys asked the court to direct the jury to skip contract implied in fact if the jury first found the parties had an enforceable express contract. The court rejected that request, apparently believing it was necessary for the jury to decide both theories of contractual liability independently.

However, quantum meruit is not a contractual theory of liability. Quantum meruit applies where there is no actual contract. (*Maglica, supra,* 66 Cal.App.4th at p. 449 ["As every first year law student knows or should know, recovery in quantum meruit does not require a contract."].)

The fact the court wanted the jury to address all contractual theories of liability independently tells us nothing about whether the court would have rejected a proposed skipping instruction on quantum meruit—for the simple reason that quantum meruit is not a contractual theory of liability.

Even after the court stated it wanted the jury to decide both express contract and contract implied in fact, it would not have been futile to ask the court to direct the jury to skip quantum meruit upon first finding an express contract. A simple citation to *Hedging Concepts* would likely have sufficed.

DISPOSITION

The amended judgment after jury verdict is affirmed. Plaintiff and cross-defendant Rimma Breeze and cross-defendants Colin Breeze and Breeze Ventures Management, LLC, are entitled to costs.

NARES, J.

WE CONCUR:

HUFFMAN, Acting P. J.

IRION, J.